

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DWANE POSPISIL,

Plaintiff,

v.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY,

and

INDIANA INSURANCE,

and

OHIO SECURITY INSURANCE
COMPANY,

Defendants.

Case No. 8:15-cv-184

JURY TRIAL REQUESTED

NOTICE OF REMOVAL AND JURY DEMAND
[28 U.S.C. § 1332, 28 U.S.C. § 1441; 28 U.S.C. § 1446]

PLEASE TAKE NOTICE that Defendants Indiana Insurance and Ohio Security Insurance Company ("Ohio Security"), by and through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby remove this action from the District Court of Lancaster County, Nebraska, where the action is now pending, to the United States District Court for the District of Nebraska.

1. On April 24, 2015, Plaintiff Dwane Pospisil ("Plaintiff") filed his Complaint against Defendants State Farm Mutual Automobile Insurance Company ("State Farm"), Indiana Insurance, and Ohio Security in the District Court of Lancaster County, Nebraska.

2. On April 28, 2012, Plaintiff served Corporation Service Company, the registered agent of Liberty Mutual Insurance Company, via certified mail. *See Exhibit A*, Notice of Service of Process.

3. As required by 28 U.S.C. § 1446(a), *Exhibit A* contains copies of all “process, pleadings and orders” served upon Defendants Indiana Insurance and Ohio Security.

4. Any civil action filed in state court over which the federal district courts would have original jurisdiction may be removed. 28 U.S.C. § 1441(a). Plaintiff claims entitlement to insurance proceeds under plaintiff’s automobile insurance policies with State Farm and Ohio Security due to an automobile accident that occurred on August 30, 2012. *See Exhibit A*, Complaint, generally. Plaintiff has asserted claims against State Farm for breach of contract and bad faith. *See Exhibit A*, Complaint, Counts I-II. Plaintiff has also asserted claims against Indiana Insurance and Ohio Security for breach of contract and bad faith. *See Exhibit A*, Complaint, Counts III-IV. As stated below, this case is removable because this Court has original subject matter jurisdiction on diversity grounds pursuant to 28 U.S.C. § 1332(a)(1).

A. Plaintiff and Defendants Are Citizens Of Different States

5. Complete diversity of citizenship exists between Plaintiff and Defendants State Farm, Indiana Insurance and Ohio Security.

6. At the time of filing the Complaint, Plaintiff was a citizen and resident of the State of Nebraska. *See Exhibit A*, Complaint, ¶ 1.

7. State Farm is a foreign insurance company organized and existing under the laws of the State of Illinois, with its principal place of business at One State Farm Plaza, Bloomington, Illinois 61701. State Farm is a citizen of Illinois only, and not a citizen of Nebraska. *Exhibit B*, Affidavit of Brittany Justice, ¶ 3.

8. Co-defendant State Farm has consented to the removal of this action from the District Court of Lancaster County, Nebraska to the United States District Court for the District of Nebraska. Exhibit C, Consent to Removal, ¶ 2.

8. Indiana Insurance is a registered trade name and did not issue an insurance policy in connection with this case. Indiana Insurance Company, however, is an existing foreign insurance company and presumed to be the defendant identified by Plaintiff. Indiana Insurance Company is organized and existing under the laws of the State of Indiana, with its principal place of business at 175 Berkeley Street, Boston Massachusetts 02116. Indiana Insurance is a citizen of Indiana and Massachusetts only, and not a citizen of Nebraska. Exhibit B, Affidavit of Brittany Justice at ¶ 5.

9. Ohio Security is a foreign insurance company organized and existing under the laws of the State of New Hampshire, with its principal place of business at 175 Berkeley Street, Boston, Massachusetts 02116. Ohio Security is a citizen of New Hampshire and Massachusetts only, and not a citizen of Nebraska. Exhibit B, Affidavit of Brittany Justice at ¶ 4.

B. Notice of Removal Was Filed Within The 30-Day Limit Required By 28 U.S.C. § 1446(b) And All Procedural Requirements Have Been Met.

10. As stated above in paragraph 2, Liberty Mutual Insurance Company was served, by and through its registered agent on April 28, 2015. This removal is timely under 28 U.S.C. § 1446(b) in that it is filed within thirty (30) days of April 28, 2015.

C. The Amount In Controversy Exceeds \$75,000.00, Exclusive Of Interest and Costs, As Required by 28 U.S.C. § 1332(a).

11. On the face of Plaintiff's Complaint, the amount in controversy exceeds \$75,000.00, satisfying the requirements of 28 U.S.C. § 1332(a). In his Complaint, Plaintiff has asserted four counts seeking the following damages:

- (a) “Judgment against State Farm Mutual Insurance Co. for \$232,000.00, plus interest, both pre and post judgment, attorneys fees and costs;” See Exhibit A, Complaint, Count I WHEREFORE paragraph.
- (b) “Judgment against State Farm Mutual Insurance Company for general damages and punitive damages of \$2,000,000.00, plus interest, both pre and post judgment, attorney fees and costs;” See Exhibit A, Complaint, Count II WHEREFORE paragraph.
- (c) “Judgment against Indiana Insurance and Ohio Insurance Service Company [sic] for \$1,005,000.00, plus interest, both pre and post judgment, attorney fees and costs;” See Exhibit A, Complaint, Count III WHEREFORE paragraph.
- (d) “Judgment against Indiana Insurance and Ohio Insurance Service Company [sic] for general damages and punitive damages of \$2,000,000.00, plus interest, both pre and post judgment, attorney fees and costs.” See Exhibit A, Complaint, Count IV WHEREFORE paragraph.

D. Removal To This District Is Proper.

12. By reason of the amount in controversy and the complete diversity of citizenship of the parties, the action is within the original jurisdiction of this Court pursuant to 28 U.S.C. § 1332(a).

13. Pursuant to the provisions of 28 U.S.C. § 1441 (a), the United States District Court for the District of Nebraska is the federal district court embracing the place where the state court suit is pending and the cause of action arose.

14. Defendants Indiana Insurance and Ohio Security have complied with all applicable requirements of 28 U.S.C. § 1446, and is promptly giving notice of this removal to

Plaintiff, co-defendant State Farm, and the District Court of Lancaster County, Nebraska. Pursuant to 28 U.S.C. § 1446(d), Defendants will file a copy of this Notice of Removal with the Clerk of the District Court of Lancaster County, Nebraska. As indicated in the Certificate of Service below, Defendants have served a copy of this Notice of Removal on counsel for Plaintiff and State Farm.

15. Defendants reserve the right to amend or supplement this Notice of Removal.

16. Defendants reserve all defenses.

WHEREFORE, Defendants Indiana Insurance and Ohio Security state that they have divested the state court of jurisdiction by filing with that court a Notice of Filing this Notice of Removal, and requests that this Court proceed with adjudication of this matter.

DEMAND FOR A JURY TRIAL

Defendants Indiana Insurance and Ohio Security demand a trial by jury on all issues triable by a jury herein.

Respectfully submitted,

**SEYFERTH BLUMENTHAL &
HARRIS LLC**

/s/ Bruce A. Moothart

Bruce A. Moothart, MO Bar # 45517
4801 Main Street, Suite 310
Kansas City, Missouri 64112
(816) 756-0700 (Telephone)
(816) 756-3700 (Facsimile)
bruce@sbhlaw.com

*Attorney for Defendants Indiana
Insurance and Ohio Security*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of May, 2015, a true and accurate copy of the above "Notice of Removal and Jury Demand" was filed electronically with the Court, with notice of the filing generated and sent electronically by the Court's electronic filing system to the individuals listed below, and a copy sent via U.S. Mail, postage prepaid, to:

Herbert J. Friedman
FRIEDMAN LAW OFFICES, P.C., L.L.O.
3800 Normal Blvd., Suite 200
P.O. Box 82009
Lincoln, NE 68501
T: (402) 476-1093

Attorney for Plaintiff

and

Rex A. Rezac
FRASER STRYKER, P.C., L.L.O.
500 Energy Plaza
409 South 17th Street
Omaha, NE 68102
T: (402) 978-5238
F: (402) 341-8290
rrezac@FraserStryker.com

Attorney for Defendant State Farm

/s/ Bruce A. Moothart
*Attorney for Defendants Indiana
Insurance and Ohio Security*